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IN THE MATTER OF QWEST CORPORATION'S
COMPLIANCE WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF 1996.

Docket No. RT-00000F-02-0271

**RUCO'S RESPONSE TO QWEST CORPORATION'S MOTION TO RECONSIDER PROCEDURAL
ORDER**

The Residential Utility Consumer Office ("RUCO") respectfully requests that this Commission deny Qwest's motion to reconsider the Procedural Order issued on November 7, 2002 for the following reasons: RUCO agrees with that aspect of the Procedural Order which provides that the parties should be able to reference the Section 252(e) findings in the 271 matter. Central to the §252 investigation is the question of whether Qwest manipulated its legal filing requirements in order to stymie competition. RUCO contends that Qwest has in fact manipulated the §252 requirement by intentionally engaging in a scheme to undermine competition and such a finding by this Commission would be of critical significance in determining whether §271 approval is in the public interest.

Qwest's conduct in manipulating the §252-filing requirement is the common thread that joins the §252 and the §271 matters. 47 U.S.C. §251(b)(1) places a duty on each local exchange carrier such as Qwest to prohibit unreasonable and discriminatory conditions on the resale of its telecommunications services. Moreover, all interconnection agreements must be filed for approval before the relevant state commission. (47 USC §252(a)(1) and 47 U.S.C. §252(e)) In order to obtain approval to provide interlata services, Qwest must provide interconnection on rates, terms and conditions that are just, reasonable, non-discriminatory and must provide nondiscriminatory access to network elements. (47 USC § 271(c)(2)(B)(i) and (c)(2)(B)(ii)) In addition, approval requires a finding that the authorization be consistent with the public interest. (47 U.S.C. § 271(d)(3)(C))

1 A violation of §251 or §252 does not necessarily taint a §271 application. For example, had the
2 situation been a clerical or administrative oversight which was subsequently corrected with no harm
3 resulting, there would be no reason to delay the §271 process. However, where, as here, the conduct
4 was intentional and the purpose to discriminate in violation of both §251 and §271, this Commission has
5 a duty to assure the public that Qwest's conduct will not be tolerated and safeguards will be in place
6 prior to giving §271 approval.

7 Qwest downplays the significance of first making §252 findings. According to Qwest, "The
8 Section 252(e) case intersects with the extensive Section 271 review in one way- the claim of some of
9 the parties that Eschelon and McLeod were precluded by agreements with Qwest from raising certain
10 issues in the Section 271 case. Any potential prejudice in the Section 271 case has now been
11 addressed by the workshop conducted by the Staff more than four months ago that specifically allowed
12 those parties to bring forth any evidence or issues they felt precluded from raising earlier." (Qwest's
13 Motion at page 2) Qwest is traveling down the road with blinders on. The intersection is clear –
14 Qwest's manipulation of the filing requirements was intentional, and for the purpose of discriminating
15 against other CLECs in direct violation of §271. This Commission should not consider §271 approval
16 until it makes findings as to why Qwest made its filings under §252 and whether Qwest violated the law
17 in making (or omitting to make) those filings¹.

21
22 ¹ On November 1, 2002 the Minnesota Public Utility Commission issued its Order finding that Qwest knowingly
23 and intentionally violated 47 U.S. C. §252 by not filing with that Commission written agreements many of which
24 are the same agreements at issue in Arizona. [BEGIN TRADE SECRET] [END TRADE SECRET] Qwest
publicly claims a lack of a precise standard determining what its filing obligations are under Section 252 as the
reason it failed to file the agreements. Qwest's Response to Supplemental Staff Report (August 29, 2002) at 18-
21 The Commission would be remiss to rely on Qwest's explanation for not filing and allow §271 to proceed under
the guise that, according to Qwest "it is in the best interest of Arizona consumers."

1 Qwest's solution is as puzzling as its failure to recognize the §252 and §271 connection.
2 Although expedient, it misses the point. A band-aid approach does not address Qwest's conduct.² By
3 its nature, Qwest's deliberate and intentional conduct calls into question the character of the company
4 under consideration for §271 approval. In essence, by ignoring the §252 findings, Qwest is asking the
5 Commission to take it at its word that it acted in good faith. Consumers would rather endure the
6 additional six month³ delay to be assured the protections afforded by this Commission should it be
7 determined Qwest violated the law.

8 Qwest posits that this Commission should be persuaded to act by the fact that "... no other
9 commission in Qwest's region has found it necessary to hold up review of Section 271 issues because
10 of §252(e) issues." (Qwest's Motion at page 4) Qwest fails to explain how other commission's actions
11 should determine how this commission should act. Qwest's argument, if there is one, would only carry
12 some weight if there is an apples to apples comparison. RUCO is only aware of two states in Qwest's
13 fourteen state region where an extensive §252 investigation was done (Arizona and Minnesota) on the
14 agreements in question. In Minnesota, the Commission made the hearing record from the §252
15 proceeding a part of the §271 proceeding. (Exhibit 1, Eighteenth Prehearing Order, May 23, 2002) It is
16 RUCO's understanding that the Minnesota Commission has yet to consider for approval Qwest's §271
17 application even though it has made findings in the §252 docket.

18 Qwest next cites Colorado's Public Utilities Commission direct comment on the issue noting that
19 "...the potential impact of CLEC nonparticipation in the collaborative process is, at worst, close to nil."
20 (Qwest's Motion at page 5) However, it appears that the Colorado Commission has had a recent
21 change of heart. In an Order Denying and Approving Certain Amendments to Interconnection
22 Agreements adopted by the Colorado Commission on November 13, 2002, the Commission noted:

23 ² What Qwest fails to mention about the workshop was that Qwest entered into a settlement agreement with
24 Eschelon on March 1, 2002 wherein Qwest paid Eschelon \$7.9 million to terminate among other things, the
November 15, 2000 agreements. Qwest entered into a similar type agreement with McLeod to terminate among
other things the October 26, 2000 agreements.

³ RUCO intends to file a motion to compel for unrelated reasons following this response wherein RUCO intends to
ask for a continuance of the procedural schedule in order to complete its discovery.

1 "The bartering of a CLEC's participation in proceedings of general applicability before this
2 Commission—the main purpose of which is to record actual commercial experience for the overall goal
3 of increased competition and ease with which CLECs do business with Qwest—is against the public
4 interest." (Exhibit 2, Order at pages 11-12, paragraph 5)

5 **CONCLUSION**

6 RUCO agrees with the Procedural Order that it is only logical to proceed with the §252
7 proceeding prior to the conclusion of the public interest portion of the §271 investigation. The §252
8 findings will provide this Commission with a more complete record to consider when determining its
9 ultimate recommendation to the FCC. Qwest's motion for reconsideration should be denied.

10 RESPECTFULLY SUBMITTED this 2nd day of December, 2002.

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